

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
King Videocable Company,)	
)	
Petitioner,)	File Nos.
v.)	
)	CSB-A-0348
City of Hudson and Village of North Hudson,)	
State of Wisconsin,)	
)	
Respondent.)	
)	
Appeal of Local Rate Orders.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2003

Released: November 5, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. King Videocable Company ("King"), a subsidiary of Continental Cablevision, the franchised cable operator serving the City of Hudson and Village of North Hudson ("Cities"), Wisconsin has appealed local rate orders adopted by the City of Hudson on August 5, 1996 and the Village of North Hudson on August 6, 1996, respectively, approving King's current basic service tier ("BST") rate but requiring King to issue refunds to customers for the period July 14, 1994 to August 14, 1995.¹ The Cities operate under the terms of a joint powers agreement and adopted identical rulings.² The Cities filed an opposition to which King replied. King also requested a stay of the Cities' orders, which are rendered moot by this order and are dismissed. Based upon our review of the record, we grant in part and deny in part King's appeal of the Cities' local rate orders.

II. BACKGROUND

2. The Communications Act provides that, where effective competition is absent, cable rates for the BST are subject to regulation by franchising authorities.³ Rates for the BST should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with

¹ Identified locally as Resolutions Nos. 23-96 and 96-14, respectively.

² Appeal at 1.

³ 47 U.S.C. § 543(a)(2).

Commission regulations for setting rates.⁴

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.⁵ In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.⁶ The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

III. DISCUSSION

4. On June 22, 1995, the Cities notified King of the effectiveness of their Form 328 certifications and adoption of local rate ordinances.⁷ On August 3, 1995, the Cities received King's FCC Forms 1200, 1205, 1210, and 1215.⁸ On August 15, 1995, King reduced its BST rate from \$8.17 to \$7.96.⁹ The Cities subsequently issued accounting orders on November 26, 1995.¹⁰ On August 5, 1996, the Cities approved Resolutions Nos. 15-96 and 96-6, which approved King's rates and equipment charges but ordered a refund to subscribers for the period July 14, 1994 to August 14, 1995.¹¹

5. King filed its local appeal on September 4, 1996. King argues that the Cities' orders are inconsistent with sections 76.942(b) and (c)¹² of the Commission's rules. King asserts that section 76.942(b) limits refunds back one year from implementation of a refund order.¹³ King also asserts that a local franchising authority must provide 60 days after the date of a local refund order for an operator to comply with a refund order."¹⁴ King argues that since the refund order was not issued until August 5, 1996, the earliest implementation date would be October 4, 1996 -- 60 days after the date of the refund order -- reaching back to October 4, 1995, which would mean no refund is due since King's rates were in compliance during that time.

6. King also argues that section 76.942(c)(2) applies because the Cities issued an accounting

⁴ 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

⁵ 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

⁶ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631, 5731-32 (1993); *Third Order on Reconsideration*, 9 FCC Rcd 4316, 4346 (1994).

⁷ Appeal at 1.

⁸ Appeal Exhibit C at 2.

⁹ *Id.* at 8.

¹⁰ *Id.* at 1 – 2.

¹¹ *Id.* at 2.

¹² 47 C.F.R. § 76.942(b) and (c).

¹³ Appeal at 3.

¹⁴ *Id.*

order. According to King, the refund period would run from November 26, 1995¹⁵ to October 4, 1996 then back in time to October 4, 1995. King argues that during this period, no excessive rates were charged and therefore no refunds may be ordered under Commission rules. King asserts that when the Commission approved the rules, it made clear that “the rate reduction” period for calculating a refund under 76.942(c)(1) is that ordered by a franchising authority. However, in this instance, the Cities approved the rates and did not issue prospective rate reduction orders. King argues that it should not be penalized for making a good faith attempt to comply with the rules in a timely manner and the refund order would constitute a penalty that could only act as a disincentive to voluntary compliance.

7. The Cities agree that section 76.942(b) limits the refund period to one year, but disagree with King over the computation of the one year period. The Cities computed the period under section 76.942(c)(1). The Cities deemed King’s voluntary rate reduction equivalent to implementation of a “prospective rate reduction” under the rules, which fixed the refund liability period at August 14, 1994 to August 14, 1995. The Cities argue that King’s voluntary compliance should not remove liability for past overcharges. The Cities acknowledge that this is a rather unusual case since King submitted and unilaterally implemented a rate decrease that brought it into compliance with the Commission’s regulations. Moreover, King did not wait for 30 days or for the 120-day tolling period to implement these rates, but implemented the rate reduction by notifying subscribers on their bills. The Cities argue that this process is not contemplated by the Commission’s regulations.

8. The Cities also argue that King cannot rely on section 76.942(c)(2), which is based on “the date a prospective rate reduction is issued,” because no rate reduction order was ever issued. Consequently, the section 76.942(c)(1) calculation must be used because it relies on the date the operator implements a prospective rate reduction. In the present case, King unilaterally and voluntarily implemented a rate reduction on August 15, 1995 to comply with the Commission’s rules. Therefore, the refund period calculation under section 76.942(c)(1) must be used and would be August 14, 1995 back one year to August 14, 1994.

9. The facts are not disputed by the parties, but the parties dispute the application of the Commission’s refund rules. On the one hand, King argues that the earliest refund period would be October 4, 1996 back to October 4, 1995 based on section 76.942(c)(2). In contrast, the Cities argue that the refund period should run from August 14, 1995 back to August 14, 1994 based on section 76.942(c)(1).

10. Section 76.942(b) limits a cable operator’s liability for refunds to a year. Section 76.942(c) specifies that the refund period shall run, not from the date of the local order, but either

- (1) From the date the operator implements a prospective rate reduction back in time to September 1, 1993, or, one year, whichever is shorter.
- (2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), to the date a prospective rate reduction is issued, then back in time from the date of the accounting order to the effective date of the rules; however the total refund period shall not exceed one year from the date of the accounting order.

King implemented a unilateral rate reduction on August 15, 1995. The Cities issued accounting orders on November 26, 1995. The Cities subsequently issued refund orders on August 5, 1996, but no prospective rate reduction was ordered because King had reduced rates in August of 1995. The applicable section is

¹⁵ Although King identified the date as November 20, 1995 at one point, an earlier reference, as well as the date cited by the Cities, identifies November 26, 1995 as the date the accounting order was issued.

section 76.942(c)(2) for three reasons. First, section 76.942(c)(1) keys the beginning of the refund period to the date of the “prospective” rate reduction. In this case, there was no prospective rate reduction, since King voluntarily reduced its rates less than two weeks after filing its rate forms with the Cities and more than three months prior to the Cities’ issuance of the accounting orders. Second, section 76.942(c)(2) specifically addresses refunds where accounting orders are involved, such as in this case. And third, calculation of the refund period based on section 76.942(c)(1) would unduly penalize King for voluntarily lowering its rates, which would be contrary to our policy of encouraging voluntary compliance by cable operators.

11. The proper calculation of the refund period under section 76.942(c)(2) in this case does not go forward in time to the date of a prospective rate reduction because there was none. The entire one-year period of liability runs back in time from the date the accounting orders were issued. Accordingly, the refund period runs from November 26, 1995 back to November 27, 1994. King voluntarily reduced its rates on August 15, 1995, so the practical period of refund liability is August 15, 1995 to November 27, 1994.

12. Finally, King argued that a local franchising authority must provide a cable operator 60 days -- after the date of a local refund order -- to comply with a refund order, citing *Times Mirror Cable Television of Orange Co.*¹⁶ and *Times Mirror Cable Television of Springfield, Inc.*¹⁷ Those cases do not apply to local franchising authorities issuing rate orders. In those cases, the Commission stated that a 60-day requirement for issuing orders only applied to rate reduction or refund orders issued by the Commission. The Commission directed the franchising authorities to specify effective dates that consider the amount of time necessary to prepare and send out notices and bills reflecting a rate change and the impact of cycle billing. There is no requirement that cable operators be given 60 days to comply with refund order, although they are entitled to a reasonable amount of time to comply.¹⁸

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Orders filed by King Videocable Company, a subsidiary of Continental Cablevision **ARE GRANTED IN PART AND DENIED IN PART** and **ARE REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

14. **IT IS FURTHER ORDERED** that the Stay Requests of Local Rate Orders filed by King Videocable Company, a subsidiary of Continental Cablevision, **ARE DISMISSED**.

15. This action is taken pursuant to authority delegated by § 0.283 of the Commission’s rules. 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton
Deputy Chief, Policy Division
Media Bureau

¹⁶ 10 FCC Rcd 4011 (1995).

¹⁷ 10 FCC Rcd 2340 (1995).

¹⁸ See *In the Matter of TCI Cablevision of Ohio, Inc.*, 13 FCC Rcd 17303 (1998); *In the Matter of Times Mirror Cable Television of Springfield, Inc.*, 10 FCC Rcd 2340 (1995).